

1993

Rosendahl v. Rosendahl : Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 930318-CA

IN THE UTAH COURT OF APPEALS

DOUGLAS ROSENDAHL,

Plaintiff/Appellant

vs.

ELAINE ROSENDAHL,

Defendant/Appellee.

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APPELLEE'S BRIEF

Case No. 930318-CA
Priority No. 4

APPELLEE'S BRIEF

Appeal from the Judgment of the
Eighth Judicial District Court,
Uintah County, State of Utah
The Honorable A. Lynn Payne

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JAN 21 1994

CERTIFICATE OF APPEAL

IN THE UTAH COURT OF APPEALS

DOUGLAS ROSENDAHL,)	
)	APPELLEE'S BRIEF
Plaintiff/Appellant)	
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vs.)	
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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code Annotated § 78-2a-3(2)i.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Should the Appellant's brief and arguments be stricken or disregarded as authorized by Rule 24(k) of the Utah Rules of Appellate Procedure for failure to cite to the record or to marshall the facts in support of the trial court's findings?

2. Did the trial court abuse its discretion when it awarded custody of the parties' children to the Defendant, their primary caretaker?

3. Did the trial court abuse its discretion by awarding \$550.00 per month alimony after finding that the parties had been married for 20 years, and that Plaintiff's income exceeds his expenses by \$1,285.00 while Defendant's expenses exceed her income by more than \$655.00?

4. Did the trial court abuse its discretion in awarding the Defendant possession of the family home since both parties agreed that the children loved the home and it was in the best interest of the children to remain in the home?

5. Did the trial court abuse its discretion in finding that the Defendant needed assistance in paying her legal fees and that

the Defendant had the ability and should be ordered to reimburse Defendant for part of the legal fees she incurred in the divorce?

6. Should the Plaintiff be ordered to pay the legal fees the Defendant has incurred in defending this appeal?

STANDARD OF REVIEW

The paragraph numbers correspond to each issue set forth in the above Statement of Issues Presented for Review.

1. The appeal challenges the trial court's Findings of Fact, yet it does not cite to the record or the transcript, as required by the rule. Also, the Appellant, must marshall all evidence in support of the findings and then demonstrate that the findings are not supported by the evidence. If a brief does not comply with Rule 24, then the brief should be stricken and the court should affirm the trial court's decision. State v. Yates 834 P.2d 599, 602 (Utah App. 1992), Watson v. Watson 837 P.2d 1, 4 (Utah App. 1992).

2. The appeal challenges the trial court's award of child custody. Trial courts are given broad discretion in making child custody awards which decision will not be upset absent a showing of an abuse of discretion or manifest injustice. Sukin v. Sukin 842 P.2d 922, 923 (Utah App. 1992).

3. The appeal challenges the trial court's award of alimony. The trial court's decision will not be disturbed regarding alimony, except upon a showing of a clear abuse of discretion, resulting in a serious inequity. Rudman v. Rudman 812 P.2d 73, 76 (Utah App. 1991).

4. The appeal challenges the court's decision regarding the house. Division of assets is governed by Utah Code Annotated § 30-3-5 which confers broad powers on the trial court to divide property in a manner which best serves the needs of the parties, which decision will not be disturbed absent a clear abuse of discretion. Walters v. Walters 812 P.2d 64, 67 (Utah App. 1991).

5. The appeal challenges the trial court's award of attorney's fees. An award of attorney's fees is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. Rappleye v. Rappleye 855 P.2d 260, 265-266 (Utah App. 1993).

TEXT OF DETERMINATIVE AUTHORITIES

1. Utah Code Annotated § 30-3-5

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations....

2. Utah Rules of Civil Procedure, Rule 52(a)

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the

facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A; Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses....

3. Utah Rules of Appellate Procedure Rules 24(a)(5), 24(a)(7), 24(a)(9), 24(e) and 24(k).

Utah Rules of Appellate Procedure, Rule 24. Briefs.

(a) The brief of the Appellant shall contain under appropriate headings and in the order indicated:

(5) A statement of the issues presented for review and a standard of appellate review with supporting authority for each issue.

(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, with citations to the authorities, statutes, and parts of the record relied on.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b), to pages of the reporter's transcript, or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to 11(f) or 11(g). References to exhibits shall include exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the transcript at

which the evidence was identified, offered, and received or rejected.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings, and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

STATEMENT OF THE CASE

A. Nature of Case.

Plaintiff filed this action for divorce on July 23, 1992. The Defendant filed an Answer and a Counterclaim. Issues included custody of the parties' three children, child support, alimony and division of property.

B. Disposition in the Lower Court.

On August 19, 1992, after the Complaint and Counterclaim had been filed, the court held a hearing on a motion for a temporary order. At the conclusion of that hearing, the court granted temporary custody of the parties' children to the Defendant, awarded the Defendant temporary possession of the family home and ordered Plaintiff to pay temporary child support (Record 23; hereinafter R.).

The trial was held on February 24, 1993. At the conclusion of the trial, the Court, with the concurrence of the parties,

interviewed the parties' two sons in the Court's chambers. Following that interview, the court awarded Defendant custody of the children and stated on the record, its findings and reasonings for awarding custody to the Defendant (Transcript 191-193; hereinafter T.). The court took the other issues under advisement. On March 9, 1993, the court signed its written decision (R. 51, Addendum 1). On April 10, 1993, the court signed the Findings of Fact and Conclusions of Law and Decree of Divorce (R. 59, 71, Addendum 2 and 3).

The court awarded custody of the parties' children to the Defendant with liberal visitation rights to the Plaintiff, ordered payment of child support and alimony, divided the assets of the parties on a 50/50 basis, and required Plaintiff to pay Defendant part of the attorneys fees she had incurred in the divorce. The Plaintiff paid the amount of fees ordered by the court and a Partial Satisfaction of Judgment has been filed (R. 143).

C. Statement of Facts.

The Plaintiff and Defendant were married on July 21, 1973 (R. 10, 78). There were three children born as issue of the marriage; Matt, born January 23, 1977, (T. 80), Tim, born July 15, 1980 (T. 84) and Emily, born June 11, 1983. (T. 85). In July of 1992, the parties separated and the Plaintiff moved to an apartment.

At the time of the divorce, the Defendant was 38 years of age, had graduated from Viewmont High School and had attended the University of Utah for one year. (T. 77-78). During the marriage, she worked occasionally as a secretary, took maternity leave at various times and cared for the children full time at home (T.79). At the time of the trial, she was employed as a secretary/receptionist for the Uintah School District and earning a gross monthly income of \$1,345.00. Her monthly expenses are in excess of \$2,000.00. (T.111, Exhibit No. 19, Findings of Fact 24).

During the marriage, the Defendant was the primary caretaker or, as one witness stated, "the mom of the house" (T. 91, 157, 179). She did the cooking, the laundry, helped the children with their homework, took the children to school and church activities, attended church with the children and handled the other day-to-day activities of the children (T. 158).

The Plaintiff was also 38 years of age and in good health at the time of trial. He works for U.S. West as a Communications Technician, (T. 56, 57), has a high school education with substantial post school training through U.S. West. (T. 57). His job requires that he be on 24-hour call, (T.58), and that he work out of town on occasion. (T. 57). In 1990, his gross income was \$37,981.00, in 1991, \$37,825.00, and his gross income for 1992 was \$42,000.00. (T. 61-62, Exhibits 13 and 14). Plaintiff earns

\$17.10 per hour, which based on a 40-hour week, gives him at least \$2,964.00 gross income per month (T. 58, Findings of Fact 4). The court found that the expenses claimed by the Plaintiff were excessive in certain areas, but found that the Defendant's total reasonable expenses were \$1,285.00. (T. 66-63, Exhibit 6, Findings of Fact 21).

During the marriage the Plaintiff provided most of the family income, some household help, and enjoyed hunting, fishing, and camping with his two boys (T. 37, 91).

The parties own a home and ten acres of land (T. 12). The home had been constructed by the parties and the parties have continued to improve and remodel the home (T. 12). The ten acres primarily consists of pasture and provides feed for three horses (T. 12). The home was subject to a home equity loan of \$6,100.00 (T.13, 94-97). The children of the parties love the home and both parties agreed that the children should continue to reside in the home (T. 18, 98, 140, 178, Findings of Fact 15). In addition to the home, the parties owned retirement benefits through U.S. West, vehicles, furniture and other personal property (T. 49, Exhibits 1-5).

The parties' children, Matt, who was 16 at the time of trial, Tim, who was 12 and Emily, age 9, attend church with their mother, who also helps them with school work and activities. The boys

enjoy their horses and dog and help mom around the house and property. (T. 80-85). Emily has friends in the neighborhood and the three children get along well and help each other. (T. 85-87, 158-159).

The Temporary Custody Order allowed the Plaintiff to hunt and fish with his sons and spend time with Emily on weekends, but not as much. The Defendant was cooperative and encouraged visitation under the Temporary Order. (T. 41)

At trial, the Plaintiff claimed that he should have custody of Matt and possibly Tim with the Defendant having custody of Emily. (T.11, 176). The Defendant urged that splitting the children would be detrimental to the children and that the children should continue to reside with her in the family home. (T. 86, 181-182). After interviewing the children, the court found that the Defendant had been the primary caretaker of the children and that it would not be in the best interest of the children to split them up. Further, that by granting the Defendant custody of the children, she would continue to have the day-to-day relationship with the children that had existed during the marriage. The Plaintiff could continue to enjoy fishing, hunting and camping activities with his boys through weekend visitation. (T. 191-196).

The court awarded an undivided one half interest in the house to each of the parties, and granted the Defendant possession of the

home so the children would have a place to live. The court ordered that at the time the youngest child reaches her majority, or in the event the Defendant remarries or moves, the house be sold with each party to receive one half of the net proceeds from the sale. The court divided the other assets equally and ordered the Plaintiff to pay a portion of the Defendant's legal fees. (R. 71).

SUMMARY OF ARGUMENTS

POINT 1: The appellant's brief does not comply with the requirements of Rule 24(a) of the Utah Rules of Appellate Procedure because it does not state the standard of review and does not cite to the record in its Statement of Facts and in much of the argument. The brief challenges the trial court's Findings of Fact but fails to marshall the facts supporting those findings. The brief should be stricken or ignored and the trial court's decision affirmed.

POINT II: The trial court's custody decision is in the best interest of the children. It allows each party to maintain the relationship he and she had with the children during the marriage. The decision also allows the children to maintain their relationship with each other and to remain in their familiar environment.

POINT III: The award of alimony is fully supported by the evidence, including the circumstances and length of the marriage and the earnings and needs of the parties.

POINT IV: The trial court properly awarded the Defendant possession of the home to provide a home for the children and because both parties and the children, at trial, agreed that it was in the best interest of the children to remain in the home. The fact that Plaintiff changed his mind when he did not obtain custody of the two boys does not show an abuse of discretion by the trial court.

POINT V: The trial court's finding and the evidence on which it is based, that the Defendant needed assistance in paying her legal fees and, that the Plaintiff had income in excess of his expenses with which to pay those fees, fully support the trial court's order that the Plaintiff pay \$1,200.00 towards the fees incurred by the Defendant. Furthermore, the Plaintiff has paid the judgment for fees, the judgment has been satisfied and therefore the issue is moot.

POINT VI: Plaintiff should be ordered to pay the legal fees incurred by the Defendant in responding to this appeal. Those fees should be awarded both on the basis of Defendant's need and the lack of merit for the appeal.

ARGUMENT

I. PLAINTIFF'S BRIEF DOES NOT COMPLY WITH THE REQUIREMENTS OF RULE 24 OF THE UTAH RULES OF APPELLATE PROCEDURE AND SHOULD BE STRICKEN OR IGNORED.

Rule 24 of the Utah Rules of Appellate Procedure sets forth what must be included in a brief. Rule 24(a)(7) requires a Statement of Facts, supported by citations to the Record. Rule 24(a)(9) requires that the Argument contain citations to the authorities, statutes, and record. See also Rule 24(e). Rule 24(a)(5) requires that the Standard of Review be set forth for each issue. Christensen v. Muns 812 P.2d 69, 72-73 (Utah App. 1991).

This Court has consistently held that if a brief does not comply with Rule 24, then the brief should be stricken and the Court should affirm the trial court's decision. State v. Yates 834 P.2d 599, 602 (Utah App. 1992), Steele v. Board of Review 845 P.2d 960, 962 (Utah App. 1993), State v. Price 827 P.2d 247, 248 (Utah App. 1992) and Koulis v. Standard Oil Company of California 746 P.2d 1182, 1184-1185, (Utah App. 1987).

II. PLAINTIFF HAS FAILED TO MEET HIS BURDEN OF MARSHALLING THE EVIDENCE IN SUPPORT OF THE TRIAL COURT'S FINDINGS OF FACT AND THEN SHOWING THAT THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT THEM. PLAINTIFF'S APPEAL SHOULD BE REJECTED FOR HIS FAILURE TO MEET THIS REQUIREMENT.

Plaintiff's brief contains a short Statement of Facts with no citations to the record. Plaintiff's Arguments, quote segments of the transcript, which segments are taken out of context while

totally ignoring the Findings of Fact and the substantial evidence that supports those findings. If a challenge is made to the Findings of Fact, the Appellant, must marshall all evidence in support of the findings and then demonstrate that the findings are not supported by the evidence. Utah Rules of Civil Procedure, Rule 52(a), Watson v. Watson 837 P.2d 1, 4 (Utah App. 1992), Crockett v. Crockett 835 P.2d 818, 820 (Utah App. 1992).

The Plaintiff's brief fails to comply with Rule 24 and fails to marshall the facts that support the trial court's Findings. The Arguments of the Plaintiff, should be rejected and this Court should affirm the trial court's decision.

III. THE CUSTODY AND VISITATION PROVISIONS OF THE COURT'S DECREE ARE PROPER, REASONABLE, IN THE BEST INTEREST OF THE CHILDREN AND BASED ON THE EVIDENCE AND SHOULD BE SUSTAINED ON APPEAL.

In deciding the custody of children, each case is fact sensitive and the trial court is given broad discretion in making its decision. The trial court's decision will not be overturned absent an abuse of discretion. The trial court's primary focus must be on the best interest of the child. Schindler v. Schindler 776 P.2d 84, 87 (Utah App. 1989). Many factors may be considered by the court including keeping the children together, the bonding between the children and the parents, continuing the present arrangement where the children are happy and well adjusted, stability of the environment, flexibility to provide personal care

and the relationships between the children and the parent. Stability is a fundamental consideration and considerable weight should be given to which parent is the primary caretaker. Schindler v. Schindler 776 P.2d 84, 87-88 (Utah App. 1989), Paryzek v. Paryzek 776 P.2d 78, 81-83 (Utah App. 1989). There is no definitive check list of factors to be used in deciding custody. The factors are highly personal and individualized and do not lend themselves to generalizations sometimes employed in other areas of the law. The trial court must make findings regarding the best interest of the children including which parent is most likely to act in the children's best interest, including allowing frequent and continuing contact with the noncustodial parent. Sukin v. Sukin 842 P.2d 922, 924 (Utah App. 1992), Schindler v. Schindler 776 P.2d 84, 87 (Utah App. 1989).

The Plaintiff in this case, while conceding that the Defendant was the primary caretaker and that custody of the parties' daughter, Emily, should be with the Defendant, argued that he should have custody of the oldest son, Matt and possibly custody of the second son, Tim. (T. 11, 176, 178-179). His argument was that he and his boys enjoy a good relationship through hunting, fishing, camping, and other outdoor activities. (T. 18, 37, 48, 66). The Plaintiff continues that argument on appeal.

The trial court, after receiving testimony from the parties and after having interviewed the parties' two sons in chambers, found that it was important for the children to maintain the daily relationship with their mother. (Findings of Fact 6, T. 191). The court found that the relationship that the Defendant had with her sons was a day-to-day caretaking relationship, while the Plaintiff's relationship with his boys was sporadic and primarily through recreational activities. The court then found that both relationships could be continued, that it was important that the children not be spilt up and that they maintain a close relationship with each other. The Defendant was granted custody of all three children which allowed her to maintain the day-to-day caretaker relationship. The court awarded the Plaintiff liberal visitation rights which allowed him to continue to enjoy his recreational activities with his boys. (T. 191-194, R. 59, Addendum 1,2 and 3).

The decision allows the children to continue the arrangement that has existed since that parties' separation. The temporary arrangement worked well and the children were happy. Matt, the oldest son, had spent approximately a month living with his father but returned home because he missed his mother and the home. (T. 188). He, however, continued to enjoy his usual activities with his father.

The decision by the trial court is in the best interest of the children. It is supported both by the record and the court's findings. It allows the children to maintain stability in their lives and a good relationship with their parents and each other. To have split up the children and to have disrupted the existing arrangements to which the children have adjusted, as argued by the Defendant, would not have been in their best interest. The court did not abuse its discretion, and the custody and visitation provisions of the Divorce Decree should be sustained by the court.

IV. THE TRIAL COURT'S AWARD OF ALIMONY IS FULLY SUPPORTED BY THE EVIDENCE AND SHOULD BE UPHELD BY THIS COURT.

The purpose of alimony is to enable the receiving spouse to maintain, as nearly as possible, the standard of living enjoyed during the marriage, or to at least equalize the parties' respective post divorce living standards. Rasband v. Rasband 752 P.2d 1331, 1333 (Utah App. 1988), Rudman v. Rudman 812 P.2d 73, 76 (Utah App. 1991). A spouse's effort to be frugal and to live within her means should not result in her being penalized in the alimony award. Martinez v. Martinez 754 P.2d 69, 74 (Utah App. 1988). To establish the alimony award, the trial court must consider three factors:

1. The financial condition and needs of the spouse,
2. The ability of the receiving spouse to produce sufficient income for him or herself,
3. The ability of the responding spouse to provide support.

If the above three factors are considered, the Appellate Court will not disturb the trial court's decision regarding alimony absent a clear abuse of discretion. Rudman v. Rudman 812 P.2d 73, 76 (Utah App. 1991).

Plaintiff was employed at U.S. West as a communication technician and earned a gross monthly income of \$2,964.00 per month. (Findings of Fact 11, T. 58). Plaintiff's total expenses were \$1,285. (Findings of Fact 23, T. 66,68, Exhibit 6). Defendant was employed as a secretary with a gross monthly income of \$1,345.00, (Findings of Fact 12, T. 111, Exhibit 19). Her monthly expenses exceeded \$2,000. (Findings of Fact 24, T. 111-114). The court reasoned that the Defendant was in need of additional income to enable her to maintain a standard of living similar to that of the Plaintiff and that the Plaintiff had disposable income which could be used to help support the Defendant. (Findings of Fact 19-25). Since the Defendant was allowed to remain in the home, which was awarded jointly to the parties, and the Plaintiff was responsible for the home equity loan payment, the court allowed the Plaintiff a credit against the alimony for one half of the payment made on the home equity loan and an additional \$175.00 credit representing one half of the fair rental value of the home. (R. 71, Addendum 1, 2 and 3).

In this case, the trial court considered all three factors. The court found that the Defendant has a gross income of \$1,345.00 with expenses in excess of \$2,000.00. (Findings of Facts 12 and 24, T. 111). That leaves her at least \$655.00 short of meeting her basic monthly expenses. The court found that the Plaintiff was fully employed, having a gross income of \$2,964.00 and expenses of \$1,285.00. (Findings of Fact 11 and 23, T.58). Plaintiff's income left \$1,700.00 per month in excess of his expenses. To enable the Defendant to maintain a standard of living similar to that of the Plaintiff, the court ordered the payment of alimony. Those findings are supported by the record and should not be disturbed.

The Plaintiff's argument that the Defendant exaggerated her expenses is contrary to the evidence and findings of the trial court, (Findings of Fact 22, Exhibit 19), and ignores the fact that the court found that it was the Plaintiff, not the Defendant, who had overstated some of his expenses. (Findings of Fact 21). Plaintiff's argument that the Defendant's effort to save \$50.00 a month for emergencies shows lack of need, ignores the purpose of alimony which is to equalize the standard of living of the parties and seeks to penalize the Defendant for trying to save funds for unforeseen emergencies or expenses.

The trial court's award of alimony took into consideration all factors required by this Court and should be sustained.

V. THE COURT'S DECISION REGARDING THE PARTIES' HOME PROVIDES A HOME AND STABILITY FOR THE CHILDREN AND A MECHANISM FOR THE PARTIES TO EQUITABLY RECEIVE THEIR INTEREST IN THE HOME ONCE THE CHILDREN HAVE GROWN AND SHOULD BE SUSTAINED.

The division of assets in a divorce is governed by Utah Code Annotated § 30-3-5, which requires that assets and debts be divided in an equitable manner. That statute confers broad powers on the trial court to divide property in a manner which best serves the needs of the parties. Walters v. Walters 812 P.2d 64, 67 (Utah App. 1991).

The parties, in this case, owned a home on ten acres of land, retirement funds, household furnishings, vehicles, equipment such as a tractor, tiller, welder, horse trailer, camp trailer, saddles and tack, fire arms, and stocks and bonds. (Exhibits 1-5). The court divided the stocks and bonds and retirement benefits equally and divided the vehicles, equipment and household furnishings. (R.71, Addendum 1, 2 and 3). The court awarded ownership of the home equally to each party, subject to the right of the Defendant to possess the home until she remarried, co-habitated or the youngest child reached the age of eighteen, or the parties agreed to sell the home. The court provided that if the Defendant made any improvements to the home, she would be reimbursed for those capital expenditures upon sale of the home. The court further ordered the Plaintiff to pay the home equity loan on the house and

authorized him to deduct one half of each loan payment from his alimony payment. The court also gave the Plaintiff a credit of \$175.00 per month representing one half of the fair rental value of the home and ordered each party to pay one half of the taxes and insurance. See paragraphs 5 and 6 of the Decree of Divorce. The reason for that decision, was to enable the children to continue to reside in the home which was the expressed intent of the parties and the children. (Findings of Fact 15-18). Plaintiff now claims that he should have been awarded the home.

This Court has upheld similar awards as being within the sound discretion of the trial court and necessary for the stability and well being of the children. King v. King 717 P.2d 715, 717 (Utah 1986), Stephens v. Stephens 728 P.2d 991, 993 (Utah 1986) and Hagan v. Hagan 810 P.2d 478, 481 (Utah App. 1991). The trial court's decision provides additional support for the Defendant and the children, is tied to alimony by giving the Plaintiff a credit on his alimony payment for the fair rental value of the home, and is consistent with the expressed intent of the parties. The decision also requires both parties to pay half of the taxes, the loan and insurance and provides a means to credit any improvements against the sales price. The decision is consistent with the provisions of Utah Code Annotated § 30-3-5, is within the sound discretion of the trial court and should be sustained.

VI. THE COURT'S DECISION AWARDING LEGAL FEES WAS PROPER AND SHOULD BE UPHELD.

The decision to award attorney's fees, as well as the amount of such fees, are within the sound discretion of the trial court. That award, however, must be based on evidence of the receiving party's financial need, the ability of the other spouse to pay and the reasonableness of the award. Rappleye v. Rappleye 855 P.2d 260, 265 (Utah App. 1993), Morgan v. Morgan 854 P.2d 559, 568 (Utah App. 1993). Plaintiff does not challenge the reasonableness of fees, but argues that there is no showing of need by the Defendant for such fees. In making such an argument, the Plaintiff ignores the findings of the trial court and cites nothing in the record to support his argument. The trial court found that the Plaintiff's income exceeded his expenses by approximately \$1,700.00 while the Defendant's expenses exceeded her income by approximately \$650.00. Based on those income figures, the court found that the Defendant was in need of assistance on payment of her legal fees and that the Plaintiff had the ability to assist her in paying her fees. (Findings of Fact 30). The court further found that the Defendant had incurred fees in the amount of \$3,000.00, which were reasonable, but only required the Plaintiff to pay \$1,200.00, which was less than half of the fees incurred by the Defendant. If any error was made, it was by the court not requiring the Plaintiff to pay all fees incurred by the Defendant. Haumont v. Haumont 793

P.2d 421, 426 (Utah App. 1990), Muir v. Muir 841 P.2d 736, 741 (Utah App. 1992).

The rule is that when a judgment is paid and satisfied the controversy is moot and the right to appeal that issue is waived. Jensen v. Eddy 514 P.2d 1142, 1143 (Utah 1973), Hollingsworth v. Farmers Ins. Co. 655 P.2d 637, 639 (Utah 1982) and Robertson v. Gem Insurance Co. 828 P.2d 496, 504 (Utah App. 1992). In this case a judgment for attorney fees was entered against the Plaintiff. When Plaintiff appealed but refused to post a supersedeas bond a writ of garnishment was issued. Plaintiff then delivered funds to the Defendant's attorney's office to pay the judgment and a Partial Satisfaction of Judgment was filed. (R. 143). Since the judgment is paid and satisfied, the award of attorney fees is moot and the right to appeal that issue is waived.

VII. THE DEFENDANT IS ENTITLED TO AN AWARD OF THE FEES SHE HAS INCURRED ON THIS APPEAL.

The general rule is that:

when fees in a divorce, have been awarded below to the party who then prevails on appeal, fees will also be awarded that party on appeal. Crouse v. Crouse 817 P.2d 836, 840 (Utah App. 1991) quoting Bell v. Bell 810 P.2d 489, 494 (Utah App. 1991).

The court properly awarded the Defendant fees incurred at trial. It is respectfully requested that this Court order that she be awarded the fees incurred on appeal.

Rule 33 of the Utah Rules of Appellate Procedure provides that the Court may award damages including fees and costs if an appeal is frivolous or for delay. An appeal is frivolous if it is not grounded in fact, not warranted by existing law or the evidence is mischaracterised or misstated. Eames v. Eames 735 P.2d 395, 398 (Utah App. 1987), Maughan v. Maughan 770 P.2d 156, 162 (Utah App. 1989), Holme v. Smilowitz 840 P.2d 157, 169 (Utah App. 1992). Lack of good faith is not required. O'Brien v. Rush 744 P.2d 306, 310 (Utah App. 1987).

In this case, the Plaintiff's arguments are not grounded in fact as evidenced by his failure to cite to the Record to support his arguments. The Plaintiff also completely ignored the trial court's findings instead of marshalling the facts which support the findings.

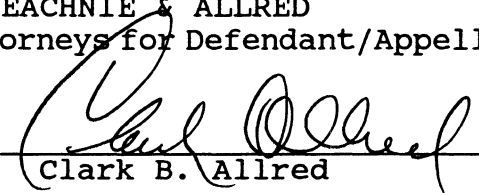
CONCLUSION

It is respectfully requested that this Court affirm the decision of the trial court and that the case be remanded with instructions to award Defendant the fees incurred on this appeal.

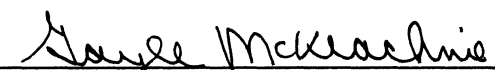
DATED this 21 day of January, 1994.

McKEACHNIE & ALLRED
Attorneys for Defendant/Appellee

By:


Clark B. Allred

By:

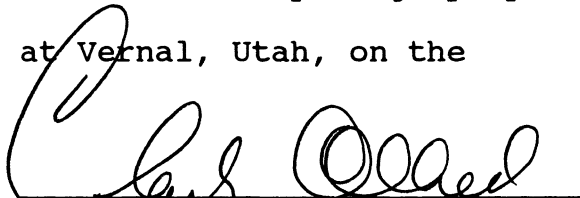

Gayle F. McKeachnie

MAILING CERTIFICATE

Clark B. Allred, attorney for Defendant/Appellee
certifies that he served the attached REPLY BRIEF OF
DEFENDANT/APPELLEE upon counsel by placing two true and correct
copies thereon in an envelope addressed to:

Mr. D. Bruce Oliver
Attorney at Law
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1218

and deposited the same, sealed, with first class postage prepaid
thereon, in the United States mail at Vernal, Utah, on the
21 day of January, 1994.


Clark B. Allred

Tab 1

MAR 10 1993

SHANA MITBECK, CLERK
BY *SM* DEPUTY

**In The Eighth Judicial District Court Of Uintah County
State of Utah**

DOUGLAS ROSENDAHL,
Plaintiff,

vs.

ELAINE ROSENDAHL,
Defendant,

DECISION

Case No. 924800174 DA

This matter came before the court for trial on February 23, 1993 before the undersigned counsel for each party and the parties were present. Based upon the evidence, the court finds and concludes as follows:

1. The parties were married July 21, 1973 and have three children as issue of this marriage. The court has jurisdiction over the parties and the issues involved in this action. The parties have lived in Uintah County for about thirteen years. The court has previously announced its decision with respect to grounds for divorce and custody of the parties children. Based upon the courts previous reasoning the court will grant each party a decree of divorce and will award the care, custody, and control of the parties children to the Defendant subject to Plaintiffs rights of liberal visitation. The court will retain jurisdiction to specify visitation if the parties are unable to agree upon visitation.

2. The parties own a home which is located on ten acres in Dry Fork. In the process

of interviewing the two boys it was obvious that they each love the home and area they live in. It is also obvious that both parties want the children to live in home that they have lived in for the last thirteen years. Therefore, the Defendant will be given possession of the parties home until she marries or co-habitates with a adult male who in not related by blood, or the youngest child reaches eighteen, or the parties agree to sell the home. Ownership in the home (subject to Defendants right of possession) will be awarded one-half to each party. The award of the home to Defendant will provide her with a home that is in need of improvement. Therefore, upon sale of the home reasonable costs associated with sale shall be deducted and the Defendant shall be reimbursed for capital expenditures (using I.R.S. guidelines) before the proceeds are divided.

3. The home has a mortgage in the amount of \$6,100.00 which the Plaintiff is ordered to pay. However, the Plaintiff may deduct one-half of the amounts which he pays towards the mortgage from the alimony which is hereinafter provided. Further, by providing the Plaintiff with housing without cost the Defendant has been placed in a position where she has the entire use of an asset which is owned by both parties. The court believes that a fair actual value for the home would be \$350.00. The Plaintiff may therefore deduct ½ of the rental value (\$175.00) from the alimony which is hereinafter provided while the Defendant lives in the parties home. Each party shall pay one-half of taxes and insurance on the home. Given the above order it is not necessary to determine the present value of the home.

4. The Plaintiff is employed by U.S. West as a technician. He is paid at the rate of

\$17.10 an hour and has a monthly income of \$2,964.00 based upon a 40 hour work week. Although he as worked significant hours of overtime in the past, it does not appear that his overtime will continue. The Defendant is employed as a secretary at the Uintah School District and has a monthly income of \$1,345.00. Child support on the combined income is \$985.00. Plaintiff has 69% of the combined income. Therefore child support in the amount of \$677.00 is ordered.

5. The parties have acquired certain stocks and bonds during the marriage which are not a part of any formal retirement plan. Because the parties were not sure how many bonds or the total value of the stocks the court will award each party one-half of the above stocks and bonds. The Plaintiff has two retirement accounts which are vested. The U.S. West retirement plan and the 401 k plan will be awarded one-half to each party as of the date of the trial in this matter. The Defendant is enrolled in a retirement plan which has not been vested. The court will award the parties one-half of the value of the Defendants retirement plan as of the day of the trial. In making this order the court is aware that the Defendant may never have a vested right in this plan. Nevertheless, in the event that the plan does vest, the Plaintiff will receive one-half of the value of the retirement plan as of the date of trial.

6. During the marriage, the parties have acquired certain debts. Apparently the only debt which was incurred prior to separation was the home equity loan. Therefore, each party is to assume any debt incurred after the parties separated.

7. During the marriage the parties have acquired certain assets which will be divided as follows:

(a) The following property is associated with the home and land and will be awarded to the Defendant : Fencing pipe, tractor, riding mower, tiller, corral panels, and garden tools. The property may be sold by the Defendant and replacement equipment purchased with the proceeds. However, if during the next four years the above is sold and not replaced by like equipment, the proceeds shall be equally divided by the parties. After three years the property is awarded to the Defendant.

(b) The property which is used by the children (i.e. their beds; bedroom furniture; world books; the boys guns and the other personal affects) shall be awarded to Defendant for the use and enjoyment of the children.

(c) The following property was received as gifts or was purchased from family members. The court notes that the video camera and the 1949 Packard each have significant value. The court will award the Plaintiff the items listed on exhibit 4 under the heading Plaintiff, as well as the video camera. The court will award the Defendant the items listed under Defendant on exhibit 4.

(d) The following property will be awarded to Plaintiff: his tools, welder, horse trailer, camp trailer, the property he has in his possession (T.V., V.C.R., table, washer, dryer, chairs, etc), telephone answering machine, two saddles and tack, three horses, two rifles, one handgun, archery equipment, 1982 Ford truck.

(e) The following property will be awarded to the Defendant: refrigerator, dining room set, microwave oven, V.C.R. and T.V. (in her possession), bed, china, washer and dryer (in her possession), sewing machine, vacuum, sporting equipment, silver trays, kitchen appliances, dishes, and silverware, stereo equipment, the remaining furniture (in her possession), and 1991 Ford Explorer.

(f) The photographs are awarded to Defendant and Plaintiff can copy at his expense.

(g) Except as otherwise provided, each party is to assume any debt associated with the property he or she receives.

(h) If Plaintiff desires, he may pasture his horses on the parties land in Dry Fork. However, if he does so, he is to maintain the fences and pay the cost associated with feeding the horses.

8. Each party is to provide insurance (medical, dental, optical) as is available through employment. Plaintiff may deduct a portion of his cost for insurance from child support as provided by statute. Each party is to pay one-half of the above expenses not covered by insurance.

9. The court has reviewed each parties financial declaration. The court notes that neither party has claimed the children as dependant for withholding purposes. If the parties took the deductions that they are entitled to take each would have additional income. The court will direct that Plaintiff be allowed to claim one child and the Defendant may claim two children for tax purposes. If there are only two children which qualify as a deduction


the parties will each claim one and if there is only one child, that child shall be claimed by Defendant. With respect to alimony, the court notes that the amounts paid are income to the receiving spouse and a deduction to the person paying alimony. This would impact both parties financial statement. The sums stated for utilities and food by Plaintiff seems to be excessive as well as the car expense, installment payments (under the above order), and incidental expenses. Nevertheless, the total amounts are not unreasonable. The court also notes the expenses of the Defendant include the cost associated with having custody of the parties children, which is partially offset through child support. Nevertheless, the amounts for expenses as stated are not unreasonable. Plaintiff has a total of \$1,285.00 in expenses while the Defendant has over \$2,000.00 in expenses. Even considering the factors such as child support and tax considerations it is obvious that the Defendant is in need of additional income so that she can maintain a standard of living similar to the Plaintiff. The Defendant also has disposable income for which can be used to support the Defendant. Therefore, the court will award alimony in the amount of \$550.00 a month. As provided above, one-half the payments on the home mortgage and \$175.00 a month (while Defendant lives in the home) may be deducted from the alimony.

10. With respect to attorney fees, the court finds that the Defendant has incurred the sum of \$3000.00 as reasonable attorney fees. The court has reviewed the time sheet and charges of Mr. Allred and finds them to be reasonable as are the rate charged. For the reasons expressed above, the court finds the Defendant is in need of assistance with respect to this bill and the Plaintiff is able to assist. The court will award attorney fees to defendant

in the amount of \$1,200.00

Counsel for Defendant is to prepare Findings of Fact Conclusions of Law and a Decree consistent with the above and submit the same to opposing counsel for approval as to form.

DATED this day 9 of March, 1993.



A. Lynn Payne
District Court Judge


CERTIFICATE OF MAILING

I hereby certify that on the 10th day of March, 1993, true and correct copies of the
DECISION were mailed, postage prepaid to Attorneys:

ALAN M. WILLIAMS
Attorney for Plaintiff
365 West 50 North #W10
Vernal, Utah 84078

CLARK B. ALLRED
Attorney for Defendant
363 East Main Street
Vernal, Utah 84078

DATED this 10th day of March, 1993.



Clerk

Tab 2

FILED
DISTRICT COURT
UINTAH COUNTY, UTAH

APR 15 1993

CLARK B. ALLRED - 0055
GAYLE F. McKEACHNIE - 2200
McKEACHNIE & ALLRED
Attorneys for Defendant
363 East Main Street
Vernal, Utah 84078
Telephone: (801) 789-4908

SHANA WITBECK, CLERK
BY DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

DOUGLAS ROSENDAHL,)	
)	
Plaintiff,)	FINDINGS OF FACT
)	AND CONCLUSIONS
vs.)	OF LAW
)	
ELAINE ROSENDAHL,)	
)	
Defendant.)	Civil No. 924800174

This case came before the Court for trial on the 24th day of February, 1993. Both Plaintiff and Defendant were present, with their attorneys. Plaintiff was represented by Alan Williams. Defendant was represented by Clark B. Allred. The 90 day period between the filing of the Complaint and the hearing for the decree of divorce had expired. Evidence was received from various witnesses. The Court made certain findings regarding the custody of the children and took the remainder of the matter under advisement. The Court has now entered its Decision and pursuant thereto the Court now enters its findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff is a resident of Uintah County, State of Utah, and had been for more than three months immediately prior to the commencement of this action.

2. Plaintiff and Defendant are husband and wife having married on July 21, 1973 in Bountiful, Davis County, Utah.

3. Plaintiff and Defendant are the parents of the following minor children as issue of this marriage, to-wit:

Emily Rosendahl, DOB 6/11/83
Timothy Rosendahl, DOB 7/15/80
Matthew Rosendahl, DOB 1/23/77

4. The parties agreed that Defendant should have custody of the parties daughter, Emily.

5. The Court, with the consent of the parties, met with the boys in the Court's chambers.

6. The Defendant has been the primary caretaker of the children during the marriage and it is important that this relationship be maintained. The day to day caretaker relationship the Defendant has with her sons would be lost if she did not have custody of the boys.

7. The relationship the boys and the Plaintiff enjoy involve fishing, hunting and other recreation activities which can continue through liberal visitation.

8. It is important for the children that they not be split up and that they maintain a relationship with each other. It would

be hard on Matt to be separated from his brother and sister.

9. Visitation with the Plaintiff should be liberal and one that makes sense for the children. The Plaintiff needs to be informed on school, church, etc., activities involving the children.

10. The parties have experienced irreconcilable differences thereby making a continuation of the marriage impossible.

11. Plaintiff is employed at U.S. West as a technician. He is paid at the rate of \$17.10 an hour and has a monthly income of \$2,964.00 based upon a 40 hour work week. Although he has worked significant hours of overtime in the past, it does not appear that his overtime will continue.

12. Defendant is employed as a secretary for Uintah School District and has a monthly income of \$1,345.00.

13. Child support based on the guidelines on the combined income is \$985.00. Plaintiff has 69% of the combined income.

14. Each party has medical insurance for the minor children available through their employment. Plaintiff's insurance provides dental and optical coverage.

15. The parties own a home which is located on ten acres in Dry Fork Canyon. In the process of interviewing the two boys, it was obvious that they each love the home and the area they live in. It was also obvious that both parties want the children to live in the home that they have lived in for the last 13 years.

Therefore, the Defendant should be given possession of the parties home until she marries or co-habits with an adult male who is not related by blood, or the youngest child reaches eighteen, or the parties agree to sell the home. Ownership in the home (subject to Defendant's right of possession) should be awarded one-half to each party.

16. The award of the home to Defendant will provide her with a home that is in need of improvements. She is entitled to make repairs to the home. Upon the sale of the home, reasonable costs associated with sale shall be deducted and the Defendant shall be reimbursed for capital expenditures (using I.R.S. guidelines) before the proceeds are divided.

17. The home has a mortgage (home equity loan) in the amount of \$6,100.00 which the Plaintiff should be ordered to pay. However, the Plaintiff should be allowed to deduct one-half of the amount which he pays (not to exceed \$100.00 per month) towards the mortgage from the alimony which will be awarded to Defendant.

18. By providing the Defendant with housing without costs, the Defendant has been placed in a position where she has the entire use of an asset which is owned by both parties. The Court believes that a fair market value for the home rental would be \$350.00. The Plaintiff may, therefore, deduct one-half of the rental value (\$175.00) from the alimony awarded to Defendant while the Defendant lives in the parties' home. Each party should pay

one-half of the taxes and insurance on the home.

19. The Court has reviewed each parties' financial declaration. Neither party has claimed the children as dependents for withholding purposes. If the parties took the deductions that they are entitled to take, each would have additional income. The Court will direct that Plaintiff be allowed to claim one child and the Defendant may claim two children for tax purposes. If there are only two children which qualify as a deduction, the parties will each claim one and if there is only one child, that child shall be claimed by Defendant.

20. The amounts paid as alimony are income to the receiving spouse and a deduction to the person paying alimony. This would impact both parties financial statement.

21. The sums stated for utilities and food by Plaintiff seems to be excessive as well as the car expense, installment payments (under the above order) and incidental expenses. Nevertheless, the total amounts are not unreasonable.

22. The expenses of the Defendant include the cost associated with having custody of the parties' children, which is partially offset through child support. Nevertheless, the amounts for expenses as stated are not unreasonable.

23. Plaintiff has a total of \$1,285.00 in expenses.

24. The Defendant has over \$2,000.00 in expenses.

25. Even considering factors such as child support and tax

considerations, it is obvious that the Defendant is in need of additional income so that she can maintain a standard of living similar to the Plaintiff. The Plaintiff has disposable income which can be used to support the Defendant. Therefore, the Court should award alimony in the amount of \$550.00 a month. One half the payment on the home mortgage and \$175.00 a month (while Defendant lives in the Dry Fork home) may be deducted from the alimony.

26. During the marriage, the parties have acquired certain debts. Apparently the only debt which was incurred prior to separation, was the home equity loan. Therefore, each party should be ordered to assume any debt incurred after the parties separated.

27. During the marriage the parties acquired certain assets including the followings:

Property associated with the house including fencing pipe, tractor, riding mower, tiller, corral panels, garden tools, property used for the children (i.e. their beds; bedroom furniture; world books; the boys guns and other personal effect) gifts or assets purchased from family members which include a video camera and the 1949 Packard, Plaintiff's tools, welder, horse trailer, camp trailer, T.V., V.C.R., table, washer, dryer, chairs, etc. telephone answering machine, two saddles and tack, three horses, two rifles, one handgun, archery equipment, 1982 Ford Truck, refrigerator, dining room set, microwave oven, V.C.R. and T.V. (in

her possession) bed, china, washer and dryer (in her possession) sewing machine, vacuum, sporting equipment, silver trays, kitchen appliances, dishes, and silverware, stereo equipment, furniture and the 1991 Ford Explorer.

28. The parties have acquired certain stocks (US West) and bonds during the marriage which are not a part of any formal retirement plan. The parties were not sure how many bonds or the total value of the stocks.

29. The Plaintiff has two retirement accounts (a U.S. West retirement plan and a 401k plan) which are vested. The Defendant is enrolled in a retirement plan which has not been vested.

30. With respect to attorney fees, the Court finds that the Defendant has incurred the sum of \$3,000.00 as reasonable attorney's fees. The Court has reviewed the time sheets and charges of Mr. Allred and finds the time and rates charged to be reasonable and necessary. For the reasons expressed above, the Court finds the Defendant is in need of assistance with respect to this bill and the Plaintiff is able to assist.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court concludes:

1. The parties are entitled to be awarded a divorce, the decree to become final upon its signing and entry.

2. Defendant is entitled to be awarded the care, custody and control of the minor children subject to the liberal right of

Defendant to visit the children and to be informed of school and church activities.

3. Plaintiff is entitled to be awarded the sum of \$677.00 per month for the support and maintenance of the minor children.

4. Each of the parties should be ordered to provide insurance (Medical, dental, optical) as is available through employment. Plaintiff is entitled to deduct a portion of his costs for insurance from child support as provided by statute. Each party should pay one-half of any dental, optical and medical expenses not covered by insurance.

5. The Defendant should be given possession of the parties home until she marries or co-habitats with an adult male who is not related by blood, or the youngest child reaches eighteen, or the parties agree to sell the home. Ownership in the home (subject to Defendant's right of possession) should be awarded one-half to each party. The award of the home to Defendant will provide her with a home that is in need of improvement. Therefore, upon the sale of the home, reasonable costs associated with sale should be deducted and the Defendant should be reimbursed for capital expenditures (using I.R.S. guidelines) before the proceeds are divided.

6. The home has a home equity loan in the amount of \$6,100.00 which the Plaintiff should be ordered to pay. Neither party should draw on the loan or in any way increase the amount owing on the loan. Plaintiff may deduct one-half of the amounts

which he pays towards the mortgage from the alimony which he should pay. By providing the Defendant with housing without costs, the Defendant has been placed in a position where she has the entire use of an asset which is owned by both parties. The Court believes that a fair market value for the home rental would be \$350.00. The Plaintiff may, therefore, deduct one-half of the rental value (\$175.00) from the alimony he pays to the Defendant. Each party should pay one-half of the taxes and insurance on the home. Given the above order, it is not necessary to determine the present value of the home.

7. The Court should award alimony Defendant in the amount of \$550.00 a month. As provided above, one-half the payments on the home mortgage and \$175.00 a month (while Defendant lives in the home) may be deducted from the alimony.

8. During the marriage the parties have acquired certain assets. The fair and reasonable manner to divide those assets is as follows:

a. The following property, associated with the home and land and will be awarded to the Defendant: Fencing pipe, tractor, riding mower, tiller, corral panels, and garden tools. This property may be sold by the Defendant and replacement equipment purchased with the proceeds. However, if during the next four years, the above is sold and not replaced by like equipment, the proceeds shall be equally divided by the parties. After four

years, the property is awarded to the Defendant.

b. The property which is used by the children (i.e. their beds; bedroom furniture; world books; the boys guns and other personal effect) shall be awarded to Defendant for the use and enjoyment of the children.

c. The following property was received as gifts or was purchased from family members. The Court notes that the video camera and the 1949 Packard each have significant value. The Court will award the Plaintiff the items listed on Exhibit 4 under the heading Plaintiff, as well as the video camera. The Court will award the Defendant the items listed under Defendant on Exhibit 4.

d. The following property should be awarded to Plaintiff: his tools, welder, horse trailer, camp trailer, the property he has in his possession (T.V., V.C.R., table, washer, dryer, chairs, etc.) telephone answering machine, two saddles and tack, three horses, two rifles, one handgun, archery equipment, 1982 Ford Truck.

e. The following property should be awarded to the Defendant; refrigerator, dining room set, microwave oven, V.C.R. and T.V. (in her possession) bed, china, washer and dryer (in her possession) sewing machine, vacuum, sporting equipment, silver trays, kitchen appliances, dishes, and silverware, stereo equipment, the remaining furniture (in her possession) and the 1991 Ford Explorer.

f. The photographs should be awarded to Defendant and Plaintiff should be allowed to copy any he wants at his expense.

g. Except as otherwise provided, each party is to assume any debt associated with the property he or she receives.

h. If Plaintiff desires, he may pasture his horses on the parties land in Dry Fork. However, if he does so, he is to maintain the fences and pay the cost associated with feeding the horses.

9. The Court should award each of the parties one-half of the stocks (U.S. West) and bonds.

10. The U.S. West retirement plan and the 401 k plan should be awarded one-half to each party as of the date of the trial in this matter. The Court should award the parties one-half of the value of the Defendant's retirement plans as of the day of the trial. In making this order the Court is aware that the Defendant may never have a vested right in this plan. Nevertheless, in the event that the plan does vest, the Plaintiff well receive one-half of the value of the retirement plan as of the date of trial.

11. The Court should order that Plaintiff be allowed to claim one child and the Defendant claim two children for tax purposes. If there are only two children which qualify as a deduction, the parties will each claim one and if there is only one child, that child shall be claimed by Defendant.

12. The legal fees and costs incurred in this case by the

Defendant are fair and reasonable. The Defendant needs assistance in paying the fees she has incurred and Defendant has the ability to assist Defendant in paying the fees incurred.

13. The Court should award judgment to the Defendant and against the Plaintiff in the amount of \$1,200.00 for the use and benefit of Defendant's attorney for fees and costs incurred in this matter.

DATED this 10 day of April, 1993.

BY THE COURT:


A. Lynn Payne, District Judge

Approved as to form:

Alan Williams
Attorney for Plaintiff

Tab 3

FILED
DISTRICT COURT
UINTAH COUNTY, UTAH

APR 15 1993

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SHANAWITZBECK, CLERK
BY Shel DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

DOUGLAS ROSENDAHL,)	
)	DIVORCE DECREE
Plaintiff,)	
)	
vs.)	
)	
ELAINE ROSENDAHL,)	
)	
Defendant.)	Civil No. 924800174 DA

Pursuant to the Findings of Fact and Conclusions of Law made
in this matter,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Each of the parties are awarded a decree of divorce
dissolving the bonds of matrimony now existing between the parties,
the same to become final upon signing and entry.

2. Defendant is awarded the care, custody, and control of
the minor children subject to the liberal right of Plaintiff to
visit the children. The visitation rights shall be arranged to be

in the best interest of the children. Defendant is to keep the Plaintiff informed as to the children's activities in school and church. The parties are to communicate with each other and cooperate in arranging visitation and keeping each other involved in the lives of their children. The Court retains jurisdiction to specify visitation if the parties are unable to agree.

3. Defendant is awarded and Plaintiff is ordered to pay the sum of \$677.00 per month, starting with the month of March 1993, for the support and maintenance of the minor children. That is the amount required under the guidelines in effect at the time of this decree. The child support award shall be reduced by 50% for each child for time periods in which the Plaintiff has the child for extended visitation under this decree for at least 25 of any 30 consecutive days.

4. Each party is hereby ordered and obligated to provide medical, dental, and optical insurance for the minor children as it is available through their employment. Plaintiff is allowed to deduct a portion of his cost for insurance from the child support as provided by statute. Each of the parties, are ordered and obligated to pay one-half of the above expenses not covered by insurance.

5. Defendant is awarded possession of the parties home until she marries or co-habitats with an adult male who is not

related by blood, or the youngest child reaches eighteen, or the parties agree to sell the home. Ownership in the home (subject to Defendant's right of possession) is awarded one-half to each party. The award of the home to Defendant will provide her with a home that is in need of improvement. Therefore, upon the sale of the home, reasonable costs associated the with sale shall be deducted and the Defendant shall be reimbursed for capital expenditures (using I.R.S. guidelines) before the proceeds are divided.

6. The home has a home equity loan in the amount of \$6,100.00 which the Plaintiff is ordered and obligated to pay. Neither party is to draw any further funds from that loan. The Plaintiff is allowed to deduct one-half of the amounts (not to exceed \$100.00 per month) which he pays towards the mortgage from the alimony which he pays to the Defendant. The Plaintiff may also deduct one-half of the rental value (\$175.00) from the alimony he pays to the Defendant. Each party is ordered and obligated to pay one-half of the taxes and insurance on the home.

7. The Plaintiff is allowed to claim one child and the Defendant may claim two children as exemptions for tax purposes. If there are only two children which qualify as an exemption, the parties will each claim one and if there is only one child, that child shall be claimed by Defendant.

8. Defendant is awarded and Plaintiff is ordered to pay

alimony in the amount of \$550.00 a month. One half the payment on the home mortgage and \$175.00 a month (while Defendant lives in the home) may be deducted from the alimony.

9. Each party is ordered to assume any debt incurred after the parties separated.

10. Defendant is awarded:

a. Fencing pipe, tractor, riding mower, tiller, corral panels, and garden tools. That property may be sold by the Defendant and replacement equipment purchased with the proceeds. However, if during the next four years, the above is sold and not replaced by like equipment, the proceeds shall be equally divided by the parties. After four years, the property is awarded to the Defendant free of any obligation to replace the equipment pay one half of the proceeds to the Plaintiff.

b. The property which is used by the children (i.e. their beds; bedroom furniture; world books; the boys guns and other personal effects) is awarded to Defendant for the use and enjoyment of the children.

c. The china cabinet and hutch. See exhibit 4.

d. Refrigerator, dining room set, microwave oven, V.C.R. and T.V. (in her possession) bed, china, washer and dryer (in her possession) sewing machine, vacuum, sporting equipment, silver trays, kitchen appliances, dishes, and silverware, stereo

equipment, the remaining furniture (in her possession) and the 1991 Ford Explorer, subject to the debt thereon.

e. The photographs subject to the Plaintiff being allowed to copy them at his expense.

f. Personal property presently in her possession.

11. Plaintiff is awarded:

a. The video camera, the 1949 Packard, the automotive tools, jacks stands, grinders, desk bookcase, quilts, satin bedspread, freezer, and gas barbecue. See Exhibit 4.

b. His tools, welder, horse trailer, camp trailer, the property he has in his possession (T.V., V.C.R., table, washer, dryer, chairs, etc.) telephone answering machine, two saddles and tack, three horses, two rifles, one handgun, archery equipment, 1982 Ford Truck.

12. Except as otherwise provided, each party is to assume any debt associated with the property he or she receives.

13. If Plaintiff desires, he may pasture his horses on the parties land in Dry Fork. However, if he does so, he is to maintain the fences and pay the costs associated with feeding the horses.

14. Each of the parties is awarded one-half of the stocks (U.S. West) and bonds.

15. The U.S. West retirement plan and the 401 k plan are

divided equally as of the date of the trial in this matter. Each of the parties are awarded one-half of the value of the Defendant's retirement plans as of the day of the trial. In making this order the Court is aware that the Defendant may never have a vested right in this plan. Nevertheless, in the event that the plan does vest, the Plaintiff will receive one-half of the value of the retirement plan as of the date of trial. The Court retains jurisdiction to sign appropriate qualified orders to make this division.

16. Defendant is awarded a judgment against Plaintiff in the amount of \$1,200.00 for the use and benefit of her attorney for fees and costs incurred in this matter.

17. Pursuant to Utah Code Ann. § 62A-11-403, Defendant is authorized to institute the income withholding provisions of § 62A-11-401 et. seq. whenever child support is delinquent as defined in § 62A-11-401. Appropriate income withholding procedures shall apply to all existing and further payors. This provision shall remain in effect until Plaintiff no longer owes child support.

18. It is further ordered that neither party shall do or say anything which shall alienate the children from the other party.

19. It is further ordered that the person responsible for any of the debt(s) of the parties, notify the respective creditor(s) regarding the Court's division of those debts, obligations or liabilities and that each of the parties notify

their creditors of their separate current addresses as required by
§ 30-3-5-(c)(ii).

20. Each party is restrained from harassing the other party
and are encouraged to work with each other in the best interest of
their children.

DATED this 10 day of ^{April}~~March~~, 1993.

AMB
District Judge, A. Lynn Payne

Approved as to form:

Alan Williams
Attorney for Plaintiff